REMARKS

The Office Action mailed September 11, 2007 has been carefully considered.

Entry of this Amendment and reconsideration are respectfully requested in view of the amendments made to the claims and for the remarks made herein.

Claims 1-17 are pending and stand rejected.

Claims 1, 5, 10, and 14 have been amended.

Rejection under 35 USC 103

The Examiner has rejected claims 1-17 under 35 USC 103(a) as being unpatentable over Sicola (USPPA 2004/0064639) in view of Mashayekhi (USP no. 6,922,791).

With regard to the rejection of the claims, the Examiner refers to Sicola for teaching a data transfer server, a primary software agent configured to perform data transfer operations and one or more failover software agents. The Examiner acknowledges that Sicola does not teach the primary software agent representing a failover software agent for another primary agent in another data storage unit. The Examiner refers to Mashayekhi for providing methods for a primary software agent to allocate the primary agent to act as a failover agent for another primary agent.

Applicant respectfully disagrees with the reason for rejecting the claims. However, the independent claims have been amended to recite the claims in better form.

Sicola teaches a data replication system having a redundant configuration including dual Fibre Channel fabric links interconnecting each of the components of two data storage sites, wherein each site comprises a host computer and associated data storage array, with redundant array controllers and adapters. (see Abstract). With reference to Figure 2, which is referred to in the instant Office Action, Sicola teaches an network configuration including two groups that are

connected, via a network, to a SAN. Figure 2 further illustrates that each group 218, 219 includes

a primary (101, 102) and a redundant server (101A, 102A), respectively. In the configuration

shown in figure 2, when a primary agent or node fails, the corresponding redundant agent or

server takes over control. That is, if primary node 101 fails, then failover node 101A takes over

the processing that was being performed by failed node 101. Node 101A is able to take over the

operation of failed node 101 because node 101A is redundantly connected to the switches that

are connected to node 101. .

However, Sicola fails to teach any means of having an agent or server in one group acting

as a failover server or agent for a failed server in another group.

Mashayekhi discloses a plurality of processes that may be used for determining an order

in which failover agents may be assigned. Mashayekhi discloses that failover servers (nodes)

may be assigned based on a determined weight of surviving nodes. Or failover nodes may be

assigned based on a determination of the time of failure. (see ABSTRACT). Mahayekhi fails to

provide any teaching of the selection of a failover agent outside the group.

Accordingly, the combination of Sicola and Mashayekhi teaches a system in which a

plurality of failover nodes may be included within the group and that an order of the selection of

the failover nodes is assigned as nodes **within a group** begin to fail. With reference to Figure 2

of Sicola, the combination of Sicola and Mashayekhi would teach a system wherein a plurality of

nodes 101, 101A, 101B …. 101n may be included in group and in case of a failure of node 101,

Mahayekhi teaches a method for determining which of the remaining nodes (101A, 101B …

101n) would take over the processing of failed node 101.

Contrary to the statements made by the Examiner, it has been shown that Sicola fails to teach or suggest a connection among nodes (agents) of different groups and Mashayekhi fails to provide any teaching to allow such a connection.

Accordingly, even if the teachings of Sicola and Mashayekhi were combined, the combined device fails to disclose that a primary server in one storage system may also be selected as a failover server in another storage system.

Although it may be argued that as Mashayekhi discloses assigning nodes or agents in case of failover, the nodes or agents could be distributed among different nodes or agents of different groups.

However, in this case, such an interpretation of the combination of the cited references would be implementing a feature beyond that disclosed by either of the references. Hence, such an interpretation of the combination of the references would require the use of the teachings of the instant invention as a blueprint for expanding upon the features of the cited references.

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

Applicant submits that the combination of the teachings of Sicola and Mashayekhi fails to describe all the elements claimed and that a *prima facia* case of obviousness has not been made. Accordingly, the invention recited in the aforementioned claims is not rendered obvious by the teachings of the cited references.

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In view of the foregoing, the applicant submits that the reason for the rejection of the independent claims, as each of these claims recite similar subject matter, has been overcome and respectfully requests that the rejection be withdrawn..

With regard the remaining claims these claims ultimately depend from the independent claims, which have been shown to contain subject matter not disclosed by, and, hence, allowable over, the reference cited. Accordingly, these claims are also allowable by virtue of their dependency from an allowable base claim.

For the amendments made to the claims and the remarks make herein, it is respectfully requests that the rejection be withdrawn and the claims allowed.

A Power of Attorney is submitted herewith, to allow the attorneys associated with customer number 73901 to represent the applicant in further prosecution of this matter before the Office. Entry of the new Power of Attorney is respectfully requested.

EMC Corporation is the Owner of Record as evidenced by the Assignment of all rights and title in the instant application by the named inventors as recorded at reel/frame **014267/0877.**
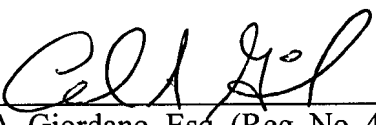

This firm's check in the amount of $990.00 for the filing of this Request for Continued Examination ($810.00) and for filing an Information Disclosure Statement ($180.00) is provided herein. No other fees are believed necessary for filing this paper. However, if any additional fees are determined to be needed, the Examiner is authorized to charge such fees to deposit account **50-4414.**

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney the telephone stated below.

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Respectfully submitted,

Dated: _____Nov 27, 2007_____   _____
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